

# **EXHIBIT 5**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

In re:	§	
	§	Chapter 11
FREE SPEECH SYSTEMS, LLC,	§	
	§	Bankruptcy Case No. 22-60043
Debtor.	§	

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Elevated Solutions Group, LLC,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Adversary No. 24-03038
	§	
Free Speech Systems, LLC, CMC Consulting,	§	
LLC	§	
	§	
Defendants.	§	
	§	
	§	
	§	
	§	

**ANSWER AND AFFIRMATIVE DEFENSES OF FREE SPEECH SYSTEMS, LLC**

Free Speech Systems, LLC (“FSS”) respectfully shows:

**Affirmative Defenses Breach of Contract**

1. FSS is not liable:
  - a. To the extent that there was no consideration;
  - b. To the extent that consideration failed in whole or part;
  - c. Because all conditions precedent have not occurred;
  - d. Because ESG is in material breach in a manner that precludes its recovery
    - including by preventing FSS’s access to the products ESG now

complains that FSS has not sold – the material breach discharged FSS’s obligations to perform;

- e. Due to the impossibility of performance; that is, ESG’s prevention of FSS’s access to the products ESG now complains that FSS did not sold;
- f. Due to ESG’s failure to join a necessary party, Alex E. Jones;
- g. Under the doctrine of *res judicata* to the extent that relief is sought that was already resolved by the stipulation and agreed order;
- h. Because ESG repudiated the contract;
- i. The suit violates section 362(a) of the Bankruptcy Code; and
- j. As to the pre-petition contracts, to the extent that FSS rejects the contracts pursuant to 365 of the Bankruptcy Code.

#### **Affirmative Defenses Tortious Interference With Contract**

- 2. FSS is not liable the extent it acted to enforce its own legal rights.
- 3. FSS is not liable to the extent it acted in good faith to exercise its rights, which actions mistakenly infringed on ESG's contract.
- 4. FSS is not liable to the extent that the statute of limitations bars ESG’s claims.
- 5. On information and belief, FSS is not liable because ESG repudiated the contract that is the basis of its claims.

#### **Admissions & Denials**

- 6. FSS admits the allegations in the following paragraphs: 5, 6, 7 (except to the extent that the allegations are not consistent with the language in the four corners of the contract), 9 (except FSS was not at fault for the “issues”), 10 (except to the extent that the

allegations are not consistent with the language in the four corners of the contract), 20, 21 (except to the extent that the allegations are not consistent with the language in the four corners of the contract), 43, 44 (except to the extent that the allegations are not consistent with the language in the four corners of the stipulation), and 51-52.

7. FSS denies the allegations in the following paragraphs: 3 (except that FSS admits that it is the debtor and its registered agent is Mr. Carsey), 31-36, 39-40, 42, 45-47, 50, 53 (ESG removed the coins), and 55-58.

8. FSS lacks knowledge to admit or deny the allegations in the following paragraphs: 1, 2, 4, 8, 11, 12, 13, 14-19, 22-30, 37, 38, 41, 48-49, and 54. The allegations are therefore denied.

9. All allegations not addressed above are denied.

#### **Attorney Fees**

10. FSS is entitled to attorney fees and costs pursuant to Texas Civil Practice and Remedies Code, Chapter 38, and section 105(a) of the Bankruptcy Code.

#### **Prayer**

FSS prays that the Court enter a take nothing judgment from plaintiff and award FSS attorney fees and costs.

Respectfully submitted:

O'CONNORWECHSLER PLLC

By: /s/ Annie Catmull

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ATTORNEYS FOR FREE SPEECH SYSTEMS,  
LLC

**Certificate of Service**

I certify that On April 15, 2024, the attached notice of appearance was served via the Court's ECF notification system to all registered parties who have made an appearance in this case.

By: /s/ Annie Catmull  
Annie Catmull